

106TH CONGRESS
1ST SESSION

H. R. 1625

To provide a process for declassifying on an expedited basis certain documents relating to human rights abuses in Guatemala, Honduras, and other regions.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1999

Mr. LANTOS (for himself, Mrs. MORELLA, Mr. PORTER, Mr. KUCINICH, Mr. SMITH of New Jersey, Ms. MCKINNEY, Mr. BARRETT of Wisconsin, Mr. BERMAN, Mr. BLAGOJEVICH, Mr. BOUCHER, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CLYBURN, Mr. COSTELLO, Mr. COYNE, Mr. DEFazio, Mr. DELAHUNT, Mr. ENGEL, Mr. EVANS, Mr. FARR of California, Mr. FRANK of Massachusetts, Mr. GUTIERREZ, Mr. HINCHEY, Ms. KILPATRICK, Mr. KLECZKA, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Mr. LUTHER, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mrs. MALONEY of New York, Mr. GEORGE MILLER of California, Mr. MINGE, Mr. MOAKLEY, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Ms. PELOSI, Mr. PETERSON of Minnesota, Ms. RIVERS, Mr. SABO, Ms. SLAUGHTER, Mr. STARK, Ms. SCHAKOWSKY, Mr. SHAYS, Mr. SMITH of Washington, Mrs. THURMAN, Mr. UNDERWOOD, Mr. WAXMAN, Mr. WEINER, and Mr. WEXLER) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To provide a process for declassifying on an expedited basis certain documents relating to human rights abuses in Guatemala, Honduras, and other regions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Human Rights Infor-
3 mation Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The people of the United States consider
7 the national and international protection and pro-
8 motion of human rights and the rule of law the most
9 important values of any democracy. The founding
10 fathers defined human rights prominently in the Bill
11 of Rights, giving those rights a special priority and
12 protection in the Constitution.

13 (2) Federal agencies are in possession of docu-
14 ments pertaining to gross human rights violations
15 abroad which are needed by foreign authorities to
16 document, investigate, and subsequently prosecute
17 instances of continued and systematic gross human
18 rights violations, including those directed against
19 citizens of the United States.

20 (3) The United States will continue to receive
21 requests from foreign authorities for legal assistance
22 regarding human rights violations, including the de-
23 classification of documents. In addition to requests
24 by Guatemala and Honduras, a Spanish court mag-
25 istrate, Baltasar Garzon, recently requested from the
26 United States information on General Augusto

1 Pinochet. Currently, the United States responds to
2 declassification requests by following procedures out-
3 lined in Presidential directives and executive orders.
4 The overwhelming interest of the United States in
5 the protection and promotion of human rights na-
6 tionally and internationally requires a significant
7 strengthening of existing declassification procedures,
8 including section 552 of title 5, United States Code
9 (commonly known as the “Freedom of Information
10 Act”).

11 (4) The expedient declassification of human
12 rights documents in full compliance with United
13 States security interests according to the procedures
14 outlined in this Act will protect global human rights
15 by strengthening the rule of law internationally, cre-
16 ating a crucial level of accountability of Federal
17 agencies, and will result in significant saving of Gov-
18 ernment resources.

19 (5) The commitment to the promotion and pro-
20 tection of human rights and democracy around the
21 world has led the United States to undertake tre-
22 mendous diplomatic, economic, and military efforts
23 to end systematic gross human rights violations
24 abroad, consistent with the national interests and
25 international leadership role of the United States. In

1 addition, countless humanitarian United States non-
2 governmental organizations and citizens of the
3 United States promote human rights and democracy
4 in foreign countries. These efforts are thwarted if
5 the cycle of impunity for human rights violations is
6 not broken in those countries, and the likelihood of
7 the need for renewed United States engagements in
8 those areas remains.

9 (6) The United States therefore has a signifi-
10 cant interest that newly established or reestablished
11 democratic societies take credible steps to fully in-
12 vestigate and prosecute human rights violations.
13 These steps can include the creation of a national or
14 international truth commission or tribunal, the ap-
15 pointment of a human rights officer, or official na-
16 tional investigations led by credible sections of the
17 civil society, including churches and nongovern-
18 mental organizations.

19 (7) The United States has long provided inter-
20 national leadership to end impunity for gross human
21 rights violations and to promote the rule of law
22 around the world by establishing and supporting the
23 Nuremberg and Tokyo War Crimes Tribunal; in ad-
24 dition, the United States has actively participated in,

1 among others, the International War Crimes Tribu-
2 nals on the former Yugoslavia and Rwanda.

3 (8) The United States has ratified the Conven-
4 tion against Torture and Other Cruel, Inhuman or
5 Degrading Treatment or Punishment, which in arti-
6 cle 9 obligates parties to “afford one another the
7 greatest measure of assistance in connection with
8 criminal proceedings brought in respect of any [acts
9 of, attempts of, or complicity in acts of torture], in-
10 cluding the supply of all evidence at their disposal
11 necessary for the proceedings.” In addition, as a
12 member State of the Organization of American
13 States, the United States should seek to follow the
14 December 8, 1998, recommendation of the Inter-
15 American Commission on Human Rights “that
16 member States of the Organization of American
17 States adopt legislative and such other measures as
18 may be necessary to effectuate the right of free ac-
19 cess to information in files and documents in the
20 power of the State, particularly in cases of investiga-
21 tions to establish criminal responsibility for inter-
22 national crimes and serious violations of human
23 rights.”

24 (9) The Guatemalan peace accords, which the
25 Government of the United States firmly supports,

1 included as an important and vital component an in-
2 vestigation and a report by the Commission for the
3 Historical Clarification of Human Rights Violations
4 and Acts of Violence which have Caused Suffering to
5 the Guatemalan People (referred to in this Act as
6 the “Clarification Commission”). Despite the conclu-
7 sion of this investigation, many questions, including
8 the identity of perpetrators of human rights viola-
9 tions as well as the location of bodies of the “dis-
10 appeared”, remain unanswered. The Clarification
11 Commission explicitly recommended that “all avail-
12 able legal and material resources should be utilized
13 [by the Guatemalan Government] to clarify the
14 whereabouts of the disappeared and, in the case of
15 death, to deliver the remains to the relatives.”

16 (10) Two days after presenting a parallel inves-
17 tigation, “Guatemala: Never Again”, by the Histor-
18 ical Memory Recovery Project by the Archbishop of
19 Guatemala, the director of the project, Bishop Juan
20 Jose Gerardi, was assassinated.

21 (11) President Clinton stated in Guatemala on
22 March 10, 1999, that “[f]or the United States, it is
23 important that I state clearly that support for mili-
24 tary forces or intelligence units which engaged in
25 violent and widespread repression of the kind de-

1 scribed in the report [by the Clarification Commis-
2 sion] was wrong, and the United States must not re-
3 peat that mistake. We must, and we will, instead,
4 continue to support the peace and reconciliation
5 process in Guatemala.”

6 (12) The National Commissioner for the Pro-
7 tection of Human Rights in the Republic of Hon-
8 duras has been requesting documentation of the
9 United States on human rights violations in Hon-
10 duras since November 15, 1993. The Commis-
11 sioner’s request has been partly fulfilled, but aspects
12 of it are still pending.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) HUMAN RIGHTS RECORD.—The term
16 “human rights record” means a record in the pos-
17 session, custody, or control of the United States
18 Government containing information about gross vio-
19 lations of internationally recognized human rights
20 committed after 1944.

21 (2) AGENCY.—The term “agency” means any
22 agency of the United States Government charged
23 with the conduct of foreign policy or foreign intel-
24 ligence, including, but not limited to, the Depart-
25 ment of State, the Agency for International Develop-

1 ment, the Department of Defense (and all of its
 2 components), the Central Intelligence Agency, the
 3 National Reconnaissance Office, the Department of
 4 Justice (and all of its components), the National Se-
 5 curity Council, and the Executive Office of the
 6 President.

7 (3) GROSS VIOLATIONS OF INTERNATIONALLY
 8 RECOGNIZED HUMAN RIGHTS.—The term “gross vio-
 9 lations of internationally recognized human rights”
 10 has the meaning given that term in section
 11 502B(d)(1) of the Foreign Assistance Act of 1961
 12 (22 U.S.C. 2304(d)(1)).

13 **SEC. 4. IDENTIFICATION, REVIEW, AND PUBLIC DISCLO-**
 14 **SURE OF HUMAN RIGHTS RECORDS REGARD-**
 15 **ING GUATEMALA AND HONDURAS.**

16 (a) IN GENERAL.—Notwithstanding any other provi-
 17 sion of law, the provisions of this Act shall govern the de-
 18 classification and public disclosure of human rights
 19 records by agencies.

20 (b) IDENTIFICATION OF RECORDS.—Not later than
 21 120 days after the date of enactment of this Act, each
 22 agency shall identify, review, and organize all human
 23 rights records regarding activities occurring in Guatemala
 24 and Honduras after 1944 for the purpose of declassifying
 25 and disclosing the records to the public. Except as pro-

1 vided in section 5, all records described in the preceding
2 sentence shall be made available to the public not later
3 than 30 days after a review under this section is com-
4 pleted.

5 (c) REPORT TO CONGRESS.—Not later than 150 days
6 after the date of enactment of this Act, the President shall
7 report to Congress regarding each agency’s compliance
8 with the provisions of this Act.

9 **SEC. 5. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
10 **SURE OF RECORDS.**

11 (a) IN GENERAL.—An agency may postpone public
12 disclosure of a human rights record or particular informa-
13 tion in a human rights record only if the agency deter-
14 mines that there is clear and convincing evidence that—

15 (1) the threat to the military defense, intel-
16 ligence operations, or conduct of foreign relations of
17 the United States raised by public disclosure of the
18 human rights record is of such gravity that it out-
19 weighs the public interest, and such public disclosure
20 would reveal—

21 (A) an intelligence agent whose identity
22 currently requires protection;

23 (B) an intelligence source or method—

1 (i) which is being utilized, or reason-
2 ably expected to be utilized, by the United
3 States Government;

4 (ii) which has not been officially dis-
5 closed; and

6 (iii) the disclosure of which would
7 interfere with the conduct of intelligence
8 activities; or

9 (C) any other matter currently relating to
10 the military defense, intelligence operations, or
11 conduct of foreign relations of the United
12 States, the disclosure of which would demon-
13 strably impair the national security of the
14 United States;

15 (2) the public disclosure of the human rights
16 record would reveal the name or identity of a living
17 individual who provided confidential information to
18 the United States and would pose a substantial risk
19 of harm to that individual;

20 (3) the public disclosure of the human rights
21 record could reasonably be expected to constitute an
22 unwarranted invasion of personal privacy, and that
23 invasion of privacy is so substantial that it out-
24 weighs the public interest; or

1 (4) the public disclosure of the human rights
2 record would compromise the existence of an under-
3 standing of confidentiality currently requiring pro-
4 tection between a Government agent and a cooper-
5 ating individual or a foreign government, and public
6 disclosure would be so harmful that it outweighs the
7 public interest.

8 (b) SPECIAL TREATMENT OF CERTAIN INFORMA-
9 TION.—It shall not be grounds for postponement of disclo-
10 sure of a human rights record that an individual named
11 in the human rights record was an intelligence asset of
12 the United States Government, although the existence of
13 such relationship may be withheld if the criteria set forth
14 in subsection (a) are met. For purposes of the preceding
15 sentence, the term an “intelligence asset” means a covert
16 agent as defined in section 606(4) of the National Security
17 Act of 1947 (50 U.S.C. 426(4)).

18 **SEC. 6. REQUEST FOR HUMAN RIGHTS RECORDS FROM OF-**
19 **FICIAL ENTITIES IN OTHER COUNTRIES.**

20 In the event that an agency of the United States re-
21 ceives a request for human rights records from an entity
22 created by the United Nations, the Organization of Amer-
23 ican States or a similar entity, a national truth commis-
24 sion or entity of similar nature, or from the principal jus-
25 tice or human rights official of a country that is inves-

1 tivating a pattern of gross violations of internationally rec-
 2 ognized human rights, the agency shall conduct a review
 3 of records as described in section 4 and shall declassify
 4 and publicly disclose such records in accordance with the
 5 standards and procedures set forth in this Act.

6 **SEC. 7. REVIEW OF DECISIONS TO WITHHOLD RECORDS.**

7 (a) DUTIES OF THE APPEALS PANEL.—The Inter-
 8 agency Security Classification Appeals Panel or any other
 9 entity subsequently established by law or Executive order
 10 and charged with carrying out the functions currently car-
 11 ried out by such Panel (referred to in this Act as the “Ap-
 12 peals Panel”) shall review all determinations by an agency
 13 to postpone public disclosure of any human rights record.

14 (b) DETERMINATIONS OF THE APPEALS PANEL.—

15 (1) IN GENERAL.—The Appeals Panel shall di-
 16 rect that all human rights records be disclosed to the
 17 public, unless the Appeals Panel determines that
 18 there is clear and convincing evidence that—

19 (A) the record is not a human rights
 20 record; or

21 (B) the human rights record or particular
 22 information in the human rights record quali-
 23 fies for postponement of disclosure pursuant to
 24 section 5.

1 (2) TREATMENT IN CASES OF NONDISCLO-
2 SURE.—If the Appeals Panel concurs with an agency
3 decision to postpone disclosure of a human rights
4 record, the Appeals Panel shall determine, in con-
5 sultation with the originating agency and consistent
6 with the standards set forth in this Act, which, if
7 any, of the alternative forms of disclosure described
8 in paragraph (3) shall be made by the agency.

9 (3) ALTERNATIVE FORMS OF DISCLOSURE.—
10 The forms of disclosure described in this paragraph
11 are as follows:

12 (A) Disclosure of any reasonably seg-
13 regable portion of the human rights record
14 after deletion of the portions described in para-
15 graph (1).

16 (B) Disclosure of a record that is a sub-
17 stitute for information which is not disclosed.

18 (C) Disclosure of a summary of the infor-
19 mation contained in the human rights record.

20 (4) NOTIFICATION OF DETERMINATION.—

21 (A) IN GENERAL.—Upon completion of its
22 review, the Appeals Panel shall notify the head
23 of the agency in control or possession of the
24 human rights record that was the subject of the
25 review of its determination and shall, not later

1 than 14 days after the determination, publish
2 the determination in the Federal Register.

3 (B) NOTICE TO PRESIDENT.—The Appeals
4 Panel shall notify the President of its deter-
5 mination. The notice shall contain a written un-
6 classified justification for its determination, in-
7 cluding an explanation of the application of the
8 standards contained in section 5.

9 (5) GENERAL PROCEDURES.—The Appeals
10 Panel shall publish in the Federal Register guide-
11 lines regarding its policy and procedures for adjudi-
12 cating appeals.

13 (c) PRESIDENTIAL AUTHORITY OVER APPEALS
14 PANEL DETERMINATION.—

15 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
16 OF DISCLOSURE.—The President shall have the sole
17 and nondelegable authority to review any determina-
18 tion of the Appeals Panel under this Act, and such
19 review shall be based on the standards set forth in
20 section 5. Not later than 30 days after the Appeals
21 Panel’s determination and notification to the agency
22 pursuant to subsection (b)(4), the President shall
23 provide the Appeals Panel with an unclassified writ-
24 ten certification specifying the President’s decision
25 and stating the reasons for the decision, including in

1 the case of a determination to postpone disclosure,
2 the standards set forth in section 5 which are the
3 basis for the President's determination.

4 (2) RECORD OF PRESIDENTIAL POSTPONE-
5 MENT.—The Appeals Panel shall, upon receipt of
6 the President's determination, publish in the Federal
7 Register a copy of any unclassified written certifi-
8 cation, statement, and other materials transmitted
9 by or on behalf of the President with regard to the
10 postponement of disclosure of a human rights
11 record.

12 **SEC. 8. REPORT REGARDING OTHER HUMAN RIGHTS**
13 **RECORDS.**

14 Upon completion of the review and disclosure of the
15 human rights records relating to Guatemala and Hon-
16 duras, the Information Security Policy Advisory Council,
17 established pursuant to Executive Order No. 12958, shall
18 report to Congress on the desirability and feasibility of
19 declassification of human rights records relating to other
20 countries. The report shall be available to the public.

21 **SEC. 9. RULES OF CONSTRUCTION.**

22 (a) FREEDOM OF INFORMATION ACT.—Nothing in
23 this Act shall be construed to limit any right to file a re-
24 quest with any executive agency or seek judicial review of

1 a decision pursuant to section 552 of title 5, United States
2 Code.

3 (b) JUDICIAL REVIEW.—Nothing in this Act shall be
4 construed to preclude judicial review, under chapter 7 of
5 title 5, United States Code, of final actions taken or re-
6 quired to be taken under this Act.

7 **SEC. 10. CREATION OF POSITIONS.**

8 For purposes of carrying out the provisions of this
9 Act, there shall be 2 additional positions in the Appeals
10 Panel. The President shall appoint individuals who are not
11 employees of the United States who have demonstrated
12 substantial human rights expertise and who are able to
13 meet the security requirements for the positions. The
14 President shall seek recommendations with respect to such
15 positions from nongovernmental human rights organiza-
16 tions.

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